



Consumer Electronics Association
1919 South Eads Street
Arlington, VA
22202 USA
(866) 858-1555 toll free
(703) 907-7600 main
(703) 907-7601 fax
www.CE.org

Via Electronic Filing

November 30, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, DC 20554

Re: Notice of Ex Parte Presentation – MB Docket No. 11-154

Dear Ms. Dortch:

This is to notify you that on November 28, 2011, Julie Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association (“CEA”), Brian Markwalter, Senior Vice President, Research and Standards, CEA, and Bill Belt, Senior Director, Technology and Standards, CEA, accompanied by Jim Morgan, Sony Electronics, Inc., Paul Schomburg, Panasonic Corporation of North America, Paula Boyd, Microsoft Corporation, and outside counsel William Maher and Mark Walker of Wilkinson Barker Knauer, LLP, met with Erin A. McGrath, Acting Legal Advisor, Media, Office of Commissioner McDowell.

Consistent with its comments and reply comments in the above-captioned proceeding,¹ CEA urged the careful implementation of the IP captioning provisions of Twenty-First Century Communications and Video Accessibility Act (“CVAA”) to ensure that industry has (i) the continued flexibility to innovate and (ii) certainty regarding the scope of its obligations. To help guide the meeting, CEA provided Ms. McGrath with the attached agenda that summarizes the items discussed and provides cross-references to the relevant portions of CEA’s comments and reply comments and other portions of the record.

¹ See Comments of CEA, MB Docket No. 11-154 (filed Oct. 18, 2011) (“CEA Comments”); Reply Comments of CEA, MB Docket No. 11-154 (filed Nov. 1, 2011) (“CEA Reply Comments”).

Pursuant to Section 1.1206 of the Commission's rules,² this letter is being electronically filed with your office and a copy of this submission is being provided to the meeting attendee from the Commission. Please let the undersigned know if you have any questions regarding this filing.

Respectfully submitted,

/s/ **Julie M. Kearney**

Julie M. Kearney
Vice President, Regulatory Affairs

Attachment

cc: Erin A. McGrath

² 47 C.F.R. § 1.1206.

**CVAA – IP Closed Captioning NPRM
(MB Docket No. 11-154)
CEA *Ex Parte* Meeting Agenda**

November 28, 2011

1. Introduction/Background on CEA

- a. Principal U.S. trade association for the consumer electronics and information technologies industries (Com. at 1)
- b. 2,000 member companies that cumulatively generate more than \$190 billion in annual factory sales (Com. at 1-2 n.3)
- c. CEA and its member companies were actively involved in the CVAA legislative process and continue to engage in regulatory and standards activities relating to accessibility, including the VPAAC (Com. at 2)

2. An Initial Phase-In Period is Essential

- a. A minimum 24 month phase-in period before commencing enforcement will provide the needed time for covered entities to comply with the final rules (Com. at 22-24; Rep. at 2-3)
- b. This phase-in period is consistent with and supported by FCC precedent implementing similar technical requirements and the record (Com. at 23-24; Rep. at 3)
- c. The Commission should grandfather products released prior to the promulgation of the final rules (Com. at 24)

3. A Safe Harbor Based on SMPTE-TT Best Balances the Need for Industry Flexibility and Certainty

- a. The Commission should adopt the SMPTE-TT standard (i) as a “safe harbor” interchange standard and (ii) in the case of consumer video players (VPAAC Report – Use Case #1), as a “safe harbor” delivery standard (Com at 6-7; Rep. at 3)
- b. To be eligible for the safe harbor, a manufacturer or service provider should be required to incorporate only the portion of the SMPTE-TT standard necessary to support the closed captioning functionality set forth in current FCC rules 15.119 and 15.122 (Com. at 7)

4. The Commission’s Final Rules Should Reflect the Limitations Contained in Section 203 of the CVAA and the Legislative History

- a. Captioning requirements for receiving or playback apparatus only apply when “technically feasible” and only for apparatus “designed to” receive or playback video programming that is “transmitted” by wire or radio (Com. at 10-14; Rep. at 4-5)
- b. Receiving or playback apparatus with a screen size of less than 13 inches must comply with the caption requirements “only if . . . achievable” (Com. at 14-15; Rep. at 5)
- c. Captioning requirements for recording apparatus only apply “if achievable” and only for such apparatus that is “designed to” record video programming “transmitted” by wire or radio (Com. at 11-15; Rep. at 7)
- d. The “Display-Only” exemption applies to any apparatus that requires a separate source device to render the video content (Com. at 15-16; Rep. at 10-11)
- e. The legislative history makes clear that the requirements of Section 203 only apply to “consumer” devices; thus, commercial video equipment should be excluded from the captioning requirements (Com. at 19)

5. The Section 203 Closed Captioning Requirements Should Apply Only To The Principal Means of Viewing Video Programming That a Manufacturer Includes in Covered Apparatus

- a. Consistent with the *ACS Order*, manufacturers of covered apparatus should not be held responsible for whether third-party software downloaded by end users complies with the captioning requirements (Rep. at 7-8)
- b. To comply with Section 203, the manufacturer of a covered apparatus should only have to ensure that the principal means of viewing video programming, included at the time of sale, renders or displays closed captioning when provided in a standard format (Rep. at 8-9)

6. Waivers Should be Acted Upon Promptly to Provide Certainty and Avoid Inhibiting the Introduction of New Products and Technologies

- a. The Commission should interpret its Section 203(a) waiver authority consistent with its ACS waiver authority (Com. at 16)
- b. Consistent with the *ACS Order*, “primary design” and “essential utility” should be determined from the perspective of the manufacturer (Com. at 16-17)
- c. The determination of a device’s “essential utility” is statutorily limited to one of the multiple purposes for which the device was designed (Rep. at 6-7)

7. The Commission Should Adopt Minimum Technical Requirements, If Achievable

- a. The proposed mandate that IP captioning be “at least the same quality” as television captions would create uncertainty and inhibit innovation (Com. at 4)
- b. Instead, the Commission should adopt minimum technical requirements, if achievable, to help ensure functional equivalency and preserve flexibility (Com. at 4-5)

8. The Commission Should Limit Any New Rules Regarding Interconnection Mechanisms and Standards and the Retention of User Settings

- a. To provide greater clarity to manufacturers, CEA proposes that every video output of a covered device (*see* Section 4 above) must be capable of rendering *or* passing through closed captions when delivering “video programming,” as defined by the CVAA
- b. No further regulation of interconnection mechanisms and standards is needed at this time because some mechanisms already support the pass-through of captions to client devices (*See* Com. at 21; Rep. at 10)
- c. The CVAA clearly permits the rendering of captions in the source device and providing them as open captions to the display (Rep. at 21)
- d. Deferring broad regulations regarding the retention of captioning settings will enable better coordination and harmonization of how the various user accessibility settings will be retained between viewing sessions (Com. at 22)

9. The Commission Should Refrain From Adopting the Proposal That It Establish a Minimum \$10,000 Forfeiture for Each Violation of the IP Captioning Rules

- a. Instead, the Commission should follow its standard approach and adopt a flexible, case-by-case approach to forfeitures
- b. The ACS rules did not merit the establishment of a minimum forfeiture (*See, e.g., ACS Order* ¶ 276) and neither should the closed captioning rules
- c. The Commission should establish a baseline (not minimum) forfeiture amount and use its discretion to increase or decrease the fine based on the context of the violation (*See, e.g., Microsoft Reply Comments* at 7-8)